

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1522 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

DIPAKBHAI DHALUMAL BALCHANDANI

Versus

COMPETENT AUTHORITY & ADDITIONAL COLLECTOR

Appearance:

MR MUKESH R SHAH for Petitioner

MR. T.H. SOMPURA, ASSTT. GOVERNMENT PLEADER for the Respondent.

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 18/03/97

ORAL JUDGEMENT

Despite having purchased land admeasuring 487

square metres by the petitioner forming part of survey No.305 from the original owner before commencement of the Urban Land (Ceiling and Regulation) Act, 1976 (for brevity the said Act), the land was considered to be the holding of the original owner and the land was declared as excess holding. Aggrieved by this order, the petitioner along with others filed an appeal under Section 33 of the Act before the Tribunal on the grounds that they are the bona fide purchasers of the land prior to enforcement of the Act and that ceases to be the holding of the original owner. The Tribunal vide its judgment and order dated 15.3.1993 set aside the order dated 19.11.1993 passed by the Competent Authority and remanded the matter for fresh inquiry with direction to consider the petitioner's case of a bona fide purchaser before the Act came into operation. On remand, the matter was heard on merits and the Competent Authority passed order on 29.9.1993 excluding the land purchased by the petitioner from the holding of the original owner. It would be pertinent to note here that the order of the Competent Authority holding that the petitioner and seven others had purchased the land for valid consideration from the original owner prior to the enforcement of the Act has become final as none of the parties has challenged before any of the authorities.

2. At this juncture my attention is drawn to subsequent development wherein Liriben and Rajiben filed an appeal under Section 33 of the Act before the Tribunal for getting additional units. The Tribunal recognized their rights and ordered for giving additional units. This order came to be challenged by the Government in the High Court by filing Special Civil Application No.1218 of 1996. A xerox copy of Special Civil Application No.1218 of 1996 has been shown to this court for its perusal. On reading paragraphs 2.11 and 2.12 it clearly transpires that the rights of the petitioner and seven others recognized by the Competent Authority is no more a subject matter of challenge in Special Civil Application No.1218 of 1996 since the subject matter is recognition of rights of Liriben and others for additional units.

3. It appears that the petitioner approached the Competent Authority under Section 26 of the Act for permission to sell the land. In fact, Section 26 does not contemplate any permission but requires a landholder to intimate the Competent Authority about intention to sell to enable to exercise right of preemption within a stipulated period in a case where the holding is less than the ceiling limit. In this case, admittedly, the holding of the petitioner is about 487 square metres.

What was required under Section 26 of the Act was to intimate the Competent Authority and not to seek permission for sale thereof. Leaving aside this issue, it appears that without deciding the question of pre-emption either way the Competent Authority has simpliciter filed the application relying upon pendency of Special Civil Application No.1218 of 1996 and interlocutory orders in force. In my view, the action on the part of the Competent Authority is arbitrary and reflects non-application of mind because the holding of petitioner is no more a subject-matter of writ petition No.1218 of 1996 pending in the High Court. Under these circumstances, the authority should have disposed of the petitioner's application under Section 26 of the Act on merits without taking recourse to the pendency of Special Civil Application No.1218 of 1996 and interim order passed therein. In the result, the order below Annexure-F dated 21.12.1996 passed by the Competent Authority at Rajkot is required to be quashed and set aside. The matter is remanded. The Competent Authority is directed to dispose of the petitioner's application under Section 26 of the Act on merits without being influenced by the fact of pendency of Special Civil Application No.1218 of 1996 and interim orders passed therein. Rule is made absolute with no order as to costs. Direct Service is permitted.

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